

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 727

A bill to amend 1970 PA 91, entitled
"Child custody act of 1970,"
by amending sections 2 and 7b (MCL 722.22 and 722.27b), section 2
as amended by 2002 PA 9 and section 7b as amended by 1996 PA 19.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 2. As used in this act:
- 2 (a) "Agency" means a legally authorized public or private
3 organization, or governmental unit or official, whether of this
4 state or of another state or country, concerned in the welfare of
5 minor children, including a licensed child placement agency.
- 6 (b) "Attorney" means, if appointed to represent a child under
7 this act, an attorney serving as the child's legal advocate in a
8 traditional attorney-client relationship with the child, as
9 governed by the Michigan rules of professional conduct. An
10 attorney defined under this subdivision owes the same duties of

1 undivided loyalty, confidentiality, and zealous representation of
2 the child's expressed wishes as the attorney would to an adult
3 client.

4 (c) "Child" means minor child and children. Subject to
5 section 5b of the support and parenting time enforcement act,
6 1982 PA 295, MCL 552.605b, for purposes of providing support,
7 child includes a child and children who have reached 18 years of
8 age.

9 (d) **"Grandparent" means a natural or adoptive parent of a**
10 **child's natural or adoptive parent.**

11 (e) ~~-(d)-~~ "Guardian ad litem" means an individual whom the
12 court appoints to assist the court in determining the ~~child's~~
13 best interests **of the child**. A guardian ad litem does not need
14 to be an attorney.

15 (f) ~~-(e)-~~ "Lawyer-guardian ad litem" means an attorney
16 appointed under section 4. A lawyer-guardian ad litem represents
17 the child, and has the powers and duties, as set forth in section
18 4.

19 (g) **"Parent" means the natural or adoptive parent of a child.**

20 (h) ~~-(f)-~~ "State disbursement unit" or "SDU" means the entity
21 established in section 6 of the office of child support act, 1971
22 PA 174, MCL 400.236.

23 (i) ~~-(g)-~~ "Third person" means an individual other than a
24 parent.

25 Sec. 7b. ~~-(1)- Except as provided in this subsection, a~~
26 ~~grandparent of the child may seek an order for grandparenting~~
27 ~~time in the manner set forth in this section only if a child~~

~~1 custody dispute with respect to that child is pending before the
2 court. If a natural parent of an unmarried child is deceased, a
3 parent of the deceased person may commence an action for
4 grandparenting time. Adoption of the child by a stepparent under
5 chapter X of Act No. 288 of the Public Acts of 1939, being
6 sections 710.21 to 710.70 of the Michigan Compiled Laws, does not
7 terminate the right of a parent of the deceased person to
8 commence an action for grandparenting time.~~

~~9 (2) As used in this section, "child custody dispute" includes
10 a proceeding in which any of the following occurs:~~

~~11 (a) The marriage of the child's parents is declared invalid
12 or is dissolved by the court, or a court enters a decree of legal
13 separation with regard to the marriage.~~

~~14 (b) Legal custody of the child is given to a party other than
15 the child's parent, or the child is placed outside of and does
16 not reside in the home of a parent, excluding any child who has
17 been placed for adoption with other than a stepparent, or whose
18 adoption by other than a stepparent has been legally finalized.~~

**19 (1) A child's grandparent may seek a grandparenting time
20 order under 1 or more of the following circumstances:**

**21 (a) An action for divorce, separate maintenance, or annulment
22 involving the child's parents is pending before the court.**

**23 (b) The child's parents are divorced, separated under a
24 judgment of separate maintenance, or have had their marriage
25 annulled.**

**26 (c) The child's parent who is a child of the grandparent is
27 deceased.**

1 (d) The child's parents have never been married, they are not
2 residing in the same household, and paternity has been
3 established by the completion of an acknowledgment of parentage
4 under the acknowledgment of parentage act, 1996 PA 305, MCL
5 722.1001 to 722.1013, by an order of filiation entered under the
6 paternity act, 1956 PA 205, MCL 722.711 to 722.730, or by a
7 determination by a court of competent jurisdiction that the
8 individual is the father of the child.

9 (e) Except as otherwise provided in subsection (13), legal
10 custody of the child has been given to a person other than the
11 child's parent, or the child is placed outside of and does not
12 reside in the home of a parent.

13 (f) The grandparent, within 1 year of the commencing of an
14 action under subsection (3) for grandparenting time, has provided
15 an established custodial environment for the child as described
16 in section 7, whether or not the grandparent had custody under a
17 court order.

18 (2) The court shall not permit a parent of a father who has
19 never been married to the child's mother to seek an order for
20 grandparenting time unless the father has completed an
21 acknowledgment of parentage under the acknowledgment of parentage
22 act, 1996 PA 305, MCL 722.1001 to 722.1013, an order of filiation
23 has been entered under the paternity act, 1956 PA 205, MCL
24 722.711 to 722.730, or the father has been determined to be the
25 father by a court of competent jurisdiction. The court shall not
26 permit the parent of a putative father to seek an order for
27 grandparenting time unless the putative father has provided

1 substantial and regular support or care in accordance with the
 2 putative father's ability to provide the support or care.

3 (3) A grandparent seeking a grandparenting time order ~~may~~
 4 **shall** commence an action for grandparenting time, ~~by complaint~~
 5 ~~or complaint and motion for an order to show cause, in the~~
 6 ~~circuit court in the county in which the grandchild resides. If~~
 7 ~~a child custody dispute is pending, the order shall be sought by~~
 8 ~~motion for an order to show cause. The~~ **as follows:**

9 (a) If the circuit court has continuing jurisdiction over the
 10 child, the child's grandparent shall seek a grandparenting time
 11 order by filing a motion with the circuit court in the county
 12 where the court has continuing jurisdiction.

13 (b) If the circuit court does not have continuing
 14 jurisdiction over the child, the child's grandparent shall seek a
 15 grandparenting time order by filing a complaint in the circuit
 16 court for the county where the child resides.

17 (4) A complaint or motion **for grandparenting time** shall be
 18 accompanied by an affidavit setting forth facts supporting the
 19 requested order. The grandparent shall give notice of the filing
 20 to each ~~party~~ **person** who has legal custody of, ~~the grandchild~~
 21 **or an order for parenting time with, the child.** A party having
 22 legal custody may file an opposing affidavit. A hearing shall be
 23 held by the court on its own motion or if a party ~~so~~ requests a
 24 **hearing.** At the hearing, parties submitting affidavits shall be
 25 allowed an opportunity to be heard. **In making a determination**
 26 **under this subsection, there is a rebuttable presumption in favor**
 27 **of a fit parent's actions and decisions regarding grandparenting**

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1 time. The burden is on the grandparent filing a complaint or
2 motion under this section to prove by a preponderance of the
3 evidence that this presumption is rebutted by addressing the
4 factors in subsection (6). The court shall give a fit parent's
5 position deference when making its decision.

6 (5) [Except as otherwise provided in this subsection, if] 2 fit
parents sign an affidavit stating that they both
7 oppose an order for grandparenting time, the court shall dismiss
8 the complaint or motion seeking an order for grandparenting time. [If a
grandparent files with the complaint or motion an affidavit asserting
that subsection (1)(f) applies, the court shall not dismiss the complaint
or motion for grandparenting time.]

9 (6) At the conclusion of the hearing, if the court finds that
10 ~~it is in the best interests of the child to enter a~~
11 ~~grandparenting time order~~ **the parental presumption is rebutted**
12 **by a preponderance of the evidence**, the court shall enter an
13 order providing for reasonable grandparenting time of the child
14 by the grandparent by general or specific terms and conditions.
15 ~~If a hearing is not held, the court shall enter a grandparenting~~
16 ~~time order only upon a finding that grandparenting time is in the~~
17 ~~best interests of the child. A grandparenting time order shall~~
18 ~~not be entered for the parents of a putative father unless the~~
19 ~~father has acknowledged paternity in writing, has been~~
20 ~~adjudicated to be the father by a court of competent~~
21 ~~jurisdiction, or has contributed regularly to the support of the~~
22 ~~child or children. The court shall make a record of the reasons~~
23 ~~for a denial of a requested grandparenting time order. In~~
24 **determining if the presumption is rebutted, the court shall**
25 **consider all of the following:**

26 (a) The love, affection, and other emotional ties existing
27 between the grandparent and the child.

1 (b) The length and quality of the prior relationship between
2 the child and the grandparent, the role performed by the
3 grandparent, and the existing emotional ties of the child to the
4 grandparent.

5 (c) The grandparent's moral fitness.

6 (d) The grandparent's mental and physical health.

7 (e) The child's reasonable preference, if the court considers
8 the child to be of sufficient age to express a preference.

9 (f) The effect on the child of hostility between the
10 grandparent and the parent of the child.

11 (g) The willingness of the grandparent, except in the case of
12 abuse or neglect, to encourage a close relationship between the
13 child and the parent or parents of the child.

14 (h) Any history of physical, emotional, or sexual abuse or
15 neglect of any child by the grandparent.

16 (i) Whether the child will be harmed by granting
17 grandparenting time or whether the child will be harmed by
18 denying grandparenting time.

19 (j) Whether the parent's objections to, or lack of an offer
20 of, grandparenting time are related to the child.

21 (k) Any other factor relevant to the physical and
22 psychological well-being of the child.

23 (7) ~~—(4)—~~ A grandparent may not file more than once every 2
24 years, absent a showing of good cause, a complaint or motion
25 seeking a grandparenting time order. If the court finds there is
26 good cause to allow a grandparent to file more than 1 complaint
27 or motion under this section in a 2-year period, the court shall

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1 allow the filing and shall consider the complaint or motion.

2 ~~The~~ **Upon motion of a person, the** court may order reasonable
3 attorney fees to the prevailing party.

4 **(8) The court may refer a complaint or motion for**
5 **grandparenting time filed under this section to [domestic relations**
6 **mediation as provided by supreme court rule. If no settlement is reached**
7 **through domestic relations mediation within a reasonable time after the**
8 **date of referral, the complaint or motion shall be heard by the court as**
9 **provided in this section. The court shall not refer a complaint or motion**
10 **for grandparenting time filed under this section to the friend of the**
11 **court mediation service under section 13 of the friend of the court act,**
12 **1982 PA 294, MCL 552.513.]**

13 **(9) ~~-(5)-~~** The court shall not enter an order ~~restricting the~~
14 ~~movement of the grandchild if the restriction~~ **prohibiting an**
15 **individual who has legal custody of a child from changing the**
16 **domicile of the child if the prohibition is ~~solely~~ primarily**
17 for the purpose of allowing the grandparent to exercise the
18 rights conferred in a grandparenting time order.

19 **(10) ~~-(6)-~~** A grandparenting time order entered in accordance
20 with this section ~~shall not be considered to have created~~ **does**
21 **not create** parental rights in the ~~person or persons~~ **individual**
22 **or individuals** to whom grandparenting time rights are granted.
23 The entry of a grandparenting time order ~~shall~~ **does** not prevent
24 a court of competent jurisdiction from acting upon the custody of
25 the child, the parental rights of the child, or the adoption of
26 the child.

27 **(11) ~~-(7)-~~** The court may enter an order modifying or

1 terminating a grandparenting time order ~~whenever such~~ **if there**
2 **is a change of circumstances and** a modification or termination is
3 ~~in the best interests of the child~~ **appropriate after**
4 **determining if the presumption is rebutted by applying the**
5 **factors in subsection (6).**

6 (12) The court shall make a record of its analysis and
7 findings under subsections (6), (7), and (11), including the
8 reasons for granting or denying a requested grandparenting time
9 order.

10 (13) Except as otherwise provided in this subsection,
11 adoption of a child or placement of a child for adoption under
12 the Michigan adoption code, chapter X of the probate code of
13 1939, 1939 PA 288, MCL 710.21 to 710.70, terminates the right of
14 a grandparent to commence an action for grandparenting time with
15 that child. Adoption of a child by a stepparent under the
16 Michigan adoption code, chapter X of the probate code of 1939,
17 1939 PA 288, MCL 710.21 to 710.70, does not terminate the right
18 of a grandparent to commence an action for grandparenting time
19 with that child.